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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

WILLIAM ISAAC, Plaintiff and Respondent, v. LUZELBA LOZANO et al., Defendants and Appellants.	B202499 (Los Angeles County Super. Ct. No. SC090594)

APPEAL from an order of the Superior Court of Los Angeles County. Cesar C. Sarmiento, Judge. Affirmed as modified.

Benedon & Serlin, Gerald M. Serlin and Kelly R. Horwitz for Defendants and Appellants.

Arent Fox and Roy Z. Silva for Plaintiff and Respondent.

This case arises from real estate dealings between William Isaac on one side, and Zaki Mansour and Luzelba Lozano on the other side. A jury found in favor of Isaac on a cause of action alleging breach of a written contract (a note), and found Isaac's damages were $369,940. A jury also found in favor of Isaac on a cause of action alleging breach of an oral contract (promises to pay the debt reflected by the note), and found Isaac's damages were $369,940. The jury found in favor of Isaac on a cause of action alleging fraud (promises to pay the note and/or debt, without intent to perform), and found his damages were $369,940. The trial court entered a judgment which states that Isaac shall recover two awards of $369,940, the first based on his claims for breach of written and oral contract, and the second based on his claim for fraud. The judgment also includes an award for attorney fees based on the written contract, which, by post-judgment motion, the trial court set at $191,297.30. Mansour and Lozano appeal, arguing the present form of the judgment awards Isaac a "double recovery," and that the attorney fees award is infected with error. We agree with Mansour and Lozano, modify the terms of judgment accordingly, and, as modified, affirm the judgment in its entirety. In addition, we find his other claims of error – based upon a variety of trial court rulings – lack merit.

FACTS

During the early 1980's, Isaac worked in an office in Beverly Hills associated with the Las Vegas Hilton, receiving money for "markers" to be used in the hotel's casino.[1] During the course of this work, Isaac struck up a relationship with Mansour, a sometimes user of the Hilton marker service. Later, Isaac and Mansour joined together in a series of "gentlemen's agreements" — i.e., generally founded on a handshake — to buy, manage and sell real estate. In each case, Isaac provided the funds to purchase a property, which Mansour then managed until the property was sold, at which time Isaac and Mansour

[1] Generally speaking, a marker is a casino line of credit which may be obtained either by applying with the casino for credit or by depositing cash with the casino. A gambler may then use his or her marker in the casino instead of carrying around cash. This aside is not material to the appeal before us today, but we did find it an interesting topic to research.

would divide any profits equally. Title to the properties was apparently held in Mansour's name and/or both men's names and/or a mix of both men's names and then Mansour's name.

In December 2003, Mansour and his wife, Luzelba Lozano, asked Isaac for help in completing the purchase of a $2.7 million house on Sunset Boulevard, and Isaac agreed. On December 24, 2003, Isaac wrote a personal check for $300,000, payable to Lozano, in exchange for which Mansour signed a "fill-in-the-blanks" note promising that he would pay $300,000 to Isaac in one year, together with 6 percent interest ($18,000), plus reasonable attorney fees "in case suit [was] instituted to collect [the] note . . . ."

As part of their arrangements, Isaac also agreed to be a named "co-borrower" on the bank loan used to purchase the property (because Mansour had bad credit), and, in accord with that understanding, Isaac and Lozano were identified as the co-owners of the property on a January 2004 grant deed for the property, and on a January 2004 first deed of trust. By February 2004, however, Mansour and Lozano were expressing concern to Isaac that, should he die before the note was paid, the title to the property might be "tied up in [the] probate of [his estate] for years," and, in March 2004, Isaac executed a grant deed conveying his ostensible co-interest in the property over to Lozano.

Mansour did not make payment on the $300,000 note.

In August 2006, Isaac filed a complaint against Mansour and Lozano. The basic thrust of Isaac's complaint rested on his claim that Mansour and Lozano owed Isaac the sum of $300,000, plus ancillary interest and fees, based on the note signed by Mansour in December 2003, and/or based on their oral representations and promises to repay the note. In March 2007, Mansour (for himself and without Lozano) filed a cross-complaint against Isaac, alleging that he and Isaac were partners under an oral "partnership" agreement, that Isaac owed Mansour certain partnership money, and that any money delivered over by Isaac to Mansour (i.e., the $300,000) represented Isaac's payments for past debts, and was not a loan by Isaac to Mansour. At the end of many rounds of hearings on the pleadings, none of which is relevant to the current appeal, the following causes of action remained at issue:

From Isaac's Second Amended Complaint

- (1st) fraud against Mansour based on a theory of a promise to repay the note without intent to perform;
- (4th) breach of written contract — the note — against Mansour; and
- (6th) breach of oral agreement to the same terms reflected in the note against both Mansour and Lozano.

From Mansour's Cross-complaint

- (2d) breach of fiduciary duty by a partner;
- (3d) conversion of gold coins and a pocket watch owned by Mansour;
- (5th) breach of a written agreement under which Isaac agreed to pay Mansour for assistance in certain lawsuits being litigated by Isaac; and
- (6th) fraud by a fiduciary partner.

The cause was tried to a jury in April 2007, and essentially turned on the jury's assessment of the credibility of the parties' competing stories — Isaac that the $300,000 delivered to Lozano had been a loan as represented by the note, and Mansour that the $300,000 was money that Isaac owed to Mansour in connection with their past business dealings, and that Isaac had also otherwise engaged in wrongful acts in connection with their past business dealings. On April 24, 2007, the jury returned a special verdict in favor of Isaac. Broadly summarized, the special verdict included the following findings:

On Isaac's Complaint

- Mansour "fail[ed] to do something that the [note] required him to do;"
- Isaac was harmed by Mansour's failure;
- Isaac's damages were "$369,940 + reasonable attorney's fees;"
- Isaac and Lozano entered into an oral contract;
- Lozano "fail[ed] to do something that the [oral] contract required her to do;"

- Isaac was harmed by Lozano's failure;
- Isaac's damages were "$369,940 + reasonable attorney's fees;"
- Isaac and Mansour entered into an oral contract;
- Mansour "fail[ed] to do something that the [oral] contract required him to do;"
- Isaac was harmed by Mansour's failure;
- Isaac's damages were "$369,940 + reasonable attorney's fees;"
- Mansour made false representations to Isaac;
- Isaac relied on the false representations; and
- Isaac's damages were "$369,940 + reasonable attorney's fees;"

On Mansour's Cross-complaint

- Isaac and Mansour were partners;
- Mansour did not prove his fraud by a fiduciary claim against Isaac;
- Isaac did not knowingly act against Mansour's partnership interests; and
- Mansour did not initiate his claim for breach of written contract with the four-year limitations period.

On August 6, 2007, the trial court entered a judgment which includes the following language: "Plaintiff William G. Isaac on the written and oral contract claims against Defendant Zaki Mansour and on the oral contract claim against Defendant Luzelba Lozano, [shall] have and recover from said Defendants, jointly and severally, the sum of $369,940.00, with interest thereon . . . , together with reasonable attorneys fees . . . . [¶] . . . Plaintiff William G. Isaac on the fraud/tort claim against Defendant Zaki Mansour [shall] have and recover from said Defendant the sum of $369,940.00, with interest thereon . . . , together with reasonable attorneys fees . . . ."

On August 30, 2007, Isaac filed a motion for a determination of the amount of attorney fees, asking the trial court to fix the award at $191,297.30. On October 30, 2007, the trial court granted Isaac's motion, in the amount requested.

Mansour and Lozano thereafter filed a timely notice of appeal.

DISCUSSION

I. The Judgment Includes a Double Recovery

Mansour and Lozano contend the trial court allowed Isaac to receive a "double recovery" by "upholding identical damages under both a fraud and a contract theory." We agree.

An exegetic discussion is not necessary. Mansour and Lozano are simply correct that the record shows without dispute that Isaac *proved* only *one injury* at trial, namely, the failure to be repaid the $300,000 that he loaned to Mansour and Lozano, as reflected in the note that Mansour signed in December 2003. Isaac's argument that, because he "proved both a breach of contract and a separate misrepresentation which exposed him to independent injuries, he can recover both contract and tort damages," is an abstractly correct statement of *law* that becomes a complete non sequitur when applied to the *facts*. We agree with Isaac that he proved (and the jury found) more than one theory of liability that justified an award of damages in his favor. But the question on appeal is whether Isaac suffered any damages other than the nonpayment on the $300,000 note and/or oral promise to pay the debt and/or the fraud that induced him into to loaning money to Mansour and Lozano in the first place.

We see no evidence of such "independent injuries" (Isaac's term) in the record, and, more importantly, the jury made no finding that Isaac suffered independent injuries. The jury's special verdict includes the exact same $369,940 in damages under different legal theories. The judgment's separate provisions making separate and identical awards of $369,940 for breach of contract and fraud is an impermissible double recovery of the same damages suffered by Isaac caused by acts that supported different legal theories; the judgment simply cannot reasonably be construed any other way. (*Tavaglione v. Billings* (1993) 4 Cal.4th 1150, 1158-1159; see also *Walker v. Signal Companies, Inc*. (1978) 84 Cal.App.3d 982, 995-996.)

II. The Trial Court Did Not Violate Mansour's Right to a Fair Trial

Mansour contends the judgment must be reversed in its entirety because the trial court violated his right to a fair trial by "openly vilifying" him in front of the jury. We do not see such vilification in the record.

A. The First Trial Exchange

Mansour first cites the reporter's transcript at pages 682-686 as evidence of the trial court's vilification. We have reviewed the cited pages, and see no more than an evidentiary ruling (predominantly done at side-bar) that did not go in Mansour's favor.[2] The court's ruling does not show that the trial court was biased or guilty of any other kind of judicial misconduct; and, more directly, it does not support Mansour's assertion that the court's comments during trial may have influenced the jury to question Mansour's credibility. (*Haluck v. Ricoh Electronics, Inc*. (2007) 151 Cal.App.4th 994, 1002.)

B. The Second Trial Exchange

Mansour's next reference to the record has more meat on the bone, but it still does not persuade us to reverse the judgment for undue judicial influence on the jury. During Mansour's testimony on cross-examination, the following exchange took place:

> "[ISAAC's COUNSEL]: [Do you remember your testimony] about . . . three properties . . . involving Mr. Sherinyan.
>
> "[MANSOUR]: Yes.
>
> "[ISAAC's COUNSEL]: Did you pay Mr. Sherinyan $5,000 to stand in to be —
>
> "[MANSOUR]: Absolutely not true. Mr. Isaac quoted —
>
> "[ISAAC's COUNSEL]: I'm sorry —

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[2] During Mansour's direct examination, his counsel attempted to introduce evidence that Mansour had signed a $400,000 written note on a prior occasion "as a favor" to Isaac, but they had agreed, on that prior occasion, that the note would not be an actual obligation to pay. The trial court sustained an objection to the evidence about the earlier note, ruling that the circumstances surrounding the earlier note, and the $300,000 note involved in the current action, were not similar because, in connection with the earlier note, no money had passed between Isaac to Mansour, whereas, in connection with the more recent note, Isaac had in fact delivered $300,000 to Mansour.

"[THE COURT]: Let me [*sic*] him finish asking the question. Let him finish the question and then answer.

"[MANSOUR]: Okay. Thank you, Your Honor.

"[ISAAC's COUNSEL]: These three properties you're speaking of, did [Mr. Isaac] ever own any one of those?

"[MANSOUR]: Yes, he owned it for one month.

"[ISAAC's COUNSEL]: I'm sorry. Did [Mr. Isaac] own any of those properties?

"[MANSOUR]: Yes, he did.

"[ISAAC's COUNSEL]: Did he own at least two of those properties?

"[MANSOUR]: He owned three of those.

"[ISAAC's COUNSEL]: He owned all of those properties; correct?

"[MANSOUR]: That's correct.

"[ISAAC's COUNSEL]: And then somehow he no longer owned the properties because of someone getting it deeded over to them, and then you picked it up from that person, right?

"[MANSOUR]: That's not true. He was sued.

"[ISAAC's COUNSEL]: I'm sorry. Move to strike.

"[THE COURT]: Just answer the question.

"[MANSOUR]: Yeah, but, Your Honor, that's why it came about. I mean —

"[THE COURT]: Just answer his question. [Your lawyer] will have a chance to ask you any follow-up questions, all right?

"[ISAAC's COUNSEL]: So it is just pure coincidence that those three properties that you're talking about had at one time been owned by [Mr. Isaac]; is that right?

"[MANSOUR]: Yes, it was owned by him for one month.

"[ISAAC's COUNSEL]: In fact, all the properties you own today had at one time been owned by [Mr. Isaac]; is that correct?

"[MANSOUR]: It was all jointly between us, and Mr. Isaac refused to make any payment on any maintenance cost.

"[ISAAC's COUNSEL]: I'm sorry.

"[THE COURT]: Ask your next question, please.

"[ISAAC's COUNSEL]: Thank you. [¶] Oh, and the reason you didn't sue Mr. Isaac before recently was because he gave you his assurances; correct?

"[MANSOUR]: I trusted him, and there was no reason. He gave me a check for $300,000 settlement and followed by giving me the grant deed on the house. His action was sufficient for me to indicate that he is in compliance with our agreement.

"[ISAAC's COUNSEL]: . . . If you had just found out about a fraud that he committed on you for over 12 years, what made you think he wasn't just going to defraud you again?

"[MANSOUR]: I never thought of it because all our prior transaction. And I seen him before making notes the same way, and I was privy to notes myself. Sign it for my son, contained the same thing. And I was sued under this note, and I asked him if he proceeded —

"[ISAAC'S COUNSEL]: Your Honor, move to strike as nonresponsive.

"[THE COURT]: You asked him the question. He's trying to answer it.

"[MANSOUR]: And as a result, I was sued by his son for $400,000 which I never received, and I did it to him as a favor. And we have an agreement which we try to get in evidence —

"[ISAAC's COUNSEL]: Your Honor.

"[THE COURT]: *You know what cheating is, Mr. Mansour? I told you about it before. You got* [*sic*] *to answer the questions. You abide by the rulings I make, you understand? That's the second time you did that. I try to be fair to both sides. I gave you an opportunity to be heard, let your attorney argue the case. I make a ruling.* [¶] *It's not an opportunity to backdoor in evidence in an underhanded manner which you've done twice in this case*. [¶] Do you have any other questions of the witness?" (Italics added.)

Isaac's counsel then asked a few final questions, and the cross-examination ended.

C. Analysis

Although it may have been better for the trial court to withhold use of the words "cheating" and "underhanded" in front of the jury, we are not persuaded that the court's single admonishment to Mansour compels reversal of the jury's verdict in favor of Isaac.

The trial court did not say that Mansour was a "cheater" who should not be believed by the jury on any matter. On the contrary, read in context, the court's comments to Mansour were both limited and related to his attempt to put evidence in front of the jury which the court had ruled was inadmissible. It was permissible for the court to instruct Mansour to answer questions in a proper manner, and to obey the court's rulings on the evidence, and Mansour's arguments on appeal do not persuade us that he was denied a fair trial. (See, e.g., *Miller v. Western Pac. R.R. Co*. (1962) 207 Cal.App.2d 581, 606.) In summary, the record does not show to us that the trial court "vilified" Mansour to such an extent that he did not receive a fair trial.

III. The Trial Court's Evidentiary Rulings Do Not Support Reversal

Mansour contends the judgment must be reversed in its entirety because the trial court wrongly excluded evidence which would have supported his version of events, and contradicted Isaac's version of events. We disagree.

A. Standard of Review

We review the trial court's rulings on the admissibility of evidence for an abuse of discretion, meaning we will not find error unless Mansour persuades us that a particular ruling "exceeds the bounds of reason." (*Dart Industries, Inc. v. Commercial Union Ins. Co*. (2002) 28 Cal.4th 1059, 1078; *Denham v. Superior Court* (1970) 2 Cal.3d 557, 566.)

B. The Rulings

1. Tax Returns

As noted above, Mansour's story at trial was that the $300,000 which he received from Isaac in 2003 was not a loan, but a payment of money related to their past business dealings. More specifically, Mansour said that the money was related to the sale of real property on Witmer Street in 1992. Mansour claimed he gave Isaac gold coins, a pocket watch and $31,000 cash to buy the Witmer Street property and that they were to split the proceeds, which turned out to be $453,734. Mansour said Isaac wrongfully kept his share because he said he needed to pay taxes for 1991 and 1992, and that Isaac acknowledged this debt in a writing.

Before trial, the court addressed whether Mansour would be allowed to introduce Isaac's tax returns in connection with Mansour's intended explanation for why he had not pressed for the money for roughly 10 years. Mansour's counsel explained that Mansour intended to testify that Isaac had said, at the time of the sale of the Witmer property, that he needed the money from the sale to cover his tax liabilities for 1991 and 1992. Mansour's counsel explained that he wanted to introduce Isaac's tax returns to show that Isaac's "tax liability" excuses for nonpayment during the early 1990's had been false. The trial court deferred ruling at that time, accepted briefs on the issue, and later ruled that Isaac's tax returns would not be admitted. When Mansour later testified at trial, he explained that he had not pressed for the money from the sale of the Witmer property during the early 1990's because Isaac had said at that time that he needed the money for "expenses."

We do not see unbounded unreasonableness in the trial court's evidentiary ruling. Isaac's tax returns would not have buttressed or strengthened Mansour's explanation for why he had not pursued the money earlier. Evidence that Isaac did not have tax liabilities in the 1990's would have no tendency in reason to prove that he had, in fact, expressed a tax liability excuse for nonpayment to Mansour during the 1990's. In other words, Isaac's tax returns would not have shown that Isaac had, in fact, expressed a tax liability excuse to Mansour during the 1990's. To the extent that Mansour may have been able to use the tax return evidence to impeach Isaac's credibility, we still see no abuse of discretion because Mansour has placed the cart in front of the horse. Isaac's tax returns would not show that he had lied to Mansour about having tax liabilities, unless the jury first believed that Isaac had, in fact, said to Mansour that he had tax liabilities.

In our view, the potential for confusion and delay is apparent, and, all-in-all, the trial court's decision not to allow Isaac's tax returns cannot be said to be unreasonable. (Evid. Code, §§ 350, 352.)

2. Profits

During his direct testimony, Isaac vaguely testified he had put "around $2 million" into the "farfetched ideas" that Mansour had brought to him over the years, and that only

"one" had made money (apparently meaning during the time that the property had been owned), and that all of their other properties had "lost" money, except for three properties that Isaac had deeded over to Mansour "free and clear" with the understanding that they would share the proceeds of the sales when Mansour sold the properties. On cross-examination, Mansour's counsel attempted to ask Isaac whether he had told tenants to pay rent directly to him, not to Mansour. Isaac's counsel objected; the trial court sustained the objection. When Mansour testified, he stated that Isaac's earlier testimony about not making money in connection with their real estate ventures was "false in its entirety." Mansour testified that Isaac "came out ahead" in their ventures, and attempted to introduce documentary evidence to buttress his testimony. The trial court sustained objections to the documents, and Mansour testified that his assertion that Isaac "came out ahead" was "based on the books and records" of the various properties in which they had been involved.

Again, we see no error. Mansour's arguments on appeal do not persuade us that there was any relevance in his proffered evidence showing that ongoing profits (rents less expenses) flowed from the properties in which he and Isaac were involved. There really was no dispute that Isaac and Mansour were involved together in buying, managing and selling a series of properties, but it does not appear to us that disputes over the ongoing profits was an issue in this case. As near as we are able to ascertain, the fundamental dispute at trial involved whether Isaac owed Mansour money from the proceeds derived from the sale of the Witmer property, or whether Mansour had borrowed money from Isaac. In our view, the potential for confusion and delay from delving into evidence of the books of their rental properties is apparent, and, all-in-all, the trial court's decision not to allow such evidence cannot be said to be unreasonable. (Evid. Code, §§ 350, 352.)

3. Availability of Other Cosigners

In a two-sentence argument, Mansour and Lozano contend there was relevance to their proffered evidence that Lozano's father had been willing to guarantee the home loan for their Sunset Boulevard house. This argument simply is not sufficient to persuade us to undo the jury's findings and the trial court's judgment on those findings.

4. Isaac's Quiet Title Action

During his direct testimony, Isaac testified that it was his understanding that he was still identified as a "co-borrower" on the home loan documents (the note and deed of trust) for the loan used to purchase Mansour's and Lozano's house on Sunset Boulevard. During his direct testimony, Mansour attempted to testify that Isaac had caused his own problems with the home loan by filing a quiet title action, and filing a lis pendens, all of which had prevented Mansour and Lozano from refinancing the property with a new loan. Upon an objection by Isaac's counsel, the trial court heard from both lawyers at side-bar, and discerned that Isaac had been "removed" from all of the original loan documents, following which the court ruled that the matter was "not an issue in dispute," and stopped the line of Mansour's testimony.

Mansour's arguments on appeal do not persuade us that the trial court's ruling was unreasonable. The status of the home loan on the Sunset property was not relevant to any dispute which was at issue at the time of trial in April 2007. Had Mansour interposed an objection during Isaac's testimony about the loan documents (Mansour did not), the court trial would have been well within its discretion in stopping Isaac from testifying about the loan documents as well. We also see no prejudice. There is no true dispute that a loan had been obtained to purchase the Sunset property, and that Isaac helped obtain that loan. We do not understand why, as Mansour suggests, it would have been helpful to the jury to know why Isaac "remained on the loan . . . for as long as he did."

5. Isaac's Signatures on the Pleadings

During cross-examination of Isaac, Mansour's counsel attempted to question Isaac about whether he had actually signed the verified first amended complaint. At a side-bar discussion on an objection by Isaac's counsel, Mansour's lawyer explained that Isaac had admitted during his deposition that he had not signed his verified first amended complaint or verified second amended complaint, and that he (i.e., Mansour's counsel) also had an expert witness who would testify that the signatures on Isaac's verified complaints were not penned by Isaac. Mansour's counsel argued that the proffered signature evidence had

"some relevance" because "it call[ed] in question [Isaac]'s credibility." The trial court did not agree, and sustained the objection.

The trial court did not err by excluding the signature evidence because, assuming Isaac did not sign his verified complaints, that fact would have no tendency in reason to show that *he* was not credible. When an identity thief forges a person's name, the victim is not the untruthful actor. (We hasten to note we are not suggesting that we see any wrongdoing whatsoever in this case; we are simply making a generalized observation about the nature of an act of forgery.) There was no error. (Evid. Code, §§ 350, 352.)

6. "Dummying-Up" of Promissory Notes

Mansour challenges the trial court's ruling on Isaac's objection to evidence about a $400,000 note that Mansour had signed on an earlier occasion, but which was not really a payable note. (See fn. 2, *ante*.) We do not see unbounded unreasonableness in the trial court's decision to exclude evidence concerning the earlier note transaction, particularly where the circumstances of the prior note transaction (i.e., no exchange of money) were materially different from the 2003 note transaction which was at issue at the current trial (i.e., $300,000 changed hands).

C. Prejudice

Finally, assuming that all or any of the trial court's evidentiary ruling amounted to error, we would not reverse the jury's findings which support the judgment because we are not convinced by Mansour's arguments on appeal that the errors prejudiced his case. Mansour's position at trial came down to this basic story: he received $300,000 from Isaac, and, at the same time, he signed a note which expressly obligated him to pay Isaac the sum of $300,000, but he (Mansour) had not truly borrowed any money from Isaac. Mansour told his story to the jury. Isaac told his conflicting story to the jury. We simply are not convinced that, had the jury heard the excluded evidence about such things as tax returns, and signatures on pleadings, and a prior, different note, it would have accepted Mansour's version of events. In light of the undisputed evidence showing that Isaac delivered $300,000 to Mansour, we are satisfied that the $300,000 note itself spoke louder than Mansour's story contradicting the note.

IV. New Trial Is Not Required Because Isaac Did Not Improperly Influence the Jury

Mansour contends the trial court erred by denying his motion for new trial on the ground that Isaac had "improperly influenced the jury." We disagree.

A. The Purported Incident

During cross-examination of Isaac, Mansour's counsel questioned him about an agreement that he signed on May 7, 1999. (Exh. 200.) The agreement, written by Mansour, is not a model of clarity, but does tend to suggest that Isaac agreed, among other terms, to pay $159,867 to Mansour from the proceeds of a sale of property on Witmer Street in Los Angeles. During that cross-examination, Isaac conceded that he did not have any documents to show that he had ever paid the money to Mansour. At the end of the cross-examination, the May 1999 agreement was admitted into evidence.

During final argument by Isaac's counsel, he discussed the May 1999 agreement, remarking that any claims which Mansour may have had based on the agreement were "stale" because Mansour could not get over the hurdle of the statute of limitations. As soon as Isaac's counsel ended his argument (i.e., when the arguments were concluded), a juror spoke up, asking the trial court if Isaac had a copy of the May 1999 agreement. The juror explained that it appeared to him or her (i.e., the juror) that the copy of the agreement that had been introduced into evidence by Mansour looked like it may have been "altered." The court advised the juror to look at the exhibit in the jury room, and, if he or she had a question, to write it down. The court then gave some final instructions, and the jury retired to deliberate. After the jury left, Mansour's counsel told the trial court that he had observed Isaac mouth "no" to the juror who had asked about the May 1999 agreement. The court responded, "I hope he did not do that. I didn't see that." When Mansour's counsel insisted that he "did see it," the court moved onto other matters.

In Mansour's postverdict motion for new trial, his counsel submitted a declaration in which he recounted Isaac's mouthed "no" comment to the juror. At the hearing on the motion for new trial, Mansour's counsel focused on other grounds for a retrial and did not mention the issue of Isaac's purported wrongful behavior. At the end of the hearing, the

trial court denied Mansour's motion as a whole, without discussing each claim made in the motion. The trial court's order on the motion also simply indicates that the motion was denied.

B. Analysis

Mansour's argument is not persuasive. The trial court did not see Isaac mouth "no" to the juror, and, even assuming such behavior did, in fact, occur, it did not amount to a wrongful attempt to influence the jury. The only case cited by Mansour in support of his argument, *Gray v. Robinson* (1939) 33 Cal.App.2d 177, is distinguishable. *Gray* was an automobile versus truck accident case in which the trial record was "replete with inferences and insinuations that [the defendant truck driver] carried insurance." (*Id.* at p. 184.) This record, concluded the court of appeal, justified the trial court's decision to grant the truck driver's motion for a new trial on the ground that he had been "prevented from having a fair trial." (*Ibid*.) *Gray* does not support Mansour's argument that Isaac's purported, isolated act of mouthing "no" prevented Mansour from having a fair trial.

V. Liability for Attorney Fees May Not Be Imposed Against Lozano

Lozano contends the judgment wrongly states that she is liable for attorney fees. We agree.

The award of attorney fees is supported by the attorney fee provision in the written note, i.e., they may be upheld as contractual attorney fees. The note, however, was a written contract between Isaac and Mansour. Lozano did not sign the note, and we see no evidence that she otherwise consented to be bound by the note, and, therefore, she cannot be obligated to pay attorney fees based on the note. Isaac's arguments in favor of salvaging the award against Lozano rely on his assertion that Lozano entered an oral agreement to pay his attorney fees in the event litigation was instituted to collect the $300,000 borrowed from Isaac. Isaac's argument fails because there is no evidence in the record that Lozano entered any such oral agreement. (*Boyd v. Oscar Fisher Co*. (1989) 210 Cal.App.3d 368, 379-380.) In short, the attorney fee award may only be directed against Mansour.

VI. The Full Amount of Attorney Fees Is Supported by the Evidence

Mansour contends the trial court's decision to award $191,297.30 to Isaac for his attorney fees is not supported by the evidence because the documenting evidence shows a smaller figure. We disagree.

"In California, an attorney need not submit contemporaneous time records in order to recover attorney fees . . . . Testimony of an attorney as to the number of hours worked on a . . . case is sufficient evidence to support an award of attorney's fees, even in the absence of detailed time records." (*Martino v. Denevi* (1986) 182 Cal.App.3d 553, 559.) Isaac's motion to fix the amount of attorney fees was supported by a declaration from Joe Hariton, the lead attorney from the law firm which represented Isaac in the course of the litigation. Hariton's declaration set forth the number of hours worked, and the hourly rate for that work, and included copies of billing summaries for the lawyers' work. Hariton's declaration constitutes substantial evidence in support of the trial court's award.

We reject Mansour's objection that Hariton's declaration is not sufficient because, while it refers to the various attorneys' billing summaries, the billing summary for one of the attorneys, Jason Weisberg, is not attached. First, the summary was not required. (See *Martino v. Denevi*, *supra*, 182 Cal.App.3d at p. 559.) Second, the failure to attach the one billing summary appears to have been a clerical omission (all of the summaries for the other attorneys were attached), and Mansour did not raise this issue in his opposition to the motion to fix the amount of fees. We are satisfied that, had the omission of the one billing summary been highlighted below, it could have been corrected easily. As it was, Mansour merely raised a generalized objection that Hariton's declaration did not amount to evidence of the services provided. Third, Mansour's primary objection to the amount of fees was based on his assertion that the hourly rates of Issac's attorneys ($450/hour) were "unreasonable," and should have been reduced (to $300/hour). The trial court found otherwise, and we are not persuaded by Mansour's arguments on appeal to reverse the trial court's discretionary decision on the reasonableness of the fees. We do not see an abuse of discretion. (*Robbins v. Alibrandi* (2005) 127 Cal.App.4th 438, 452.)

DISPOSITION

The judgment is modified to include one award of $369,940 in favor of plaintiff William Isaac. It is further modified to reflect that defendant Luzelba Lozano is not personally liable for attorney fees. The trial court is directed to modify the judgment in accordance with this opinion. In all other respects, the judgment is affirmed. Respondent shall recover his costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

BIGELOW, J.

We concur:

FLIER, Acting P. J.

BAUER, J.*

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* Judge of the Orange Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.